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Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020)

I. Introduction

1. Within the space of a few short weeks, Coronavirus (COVID-19) has had a profound impact on daily life, with many facing imposing severe restrictions upon personal movement and personal freedoms to enable the authorities to better combat the pandemic through public health emergency measures.
2. Persons deprived of their liberty comprise a particularly vulnerable group owing to the nature of the restrictions which are already placed upon them and their limited capacity to take precautionary measures. Within prisons and other detention settings, many of which are severely overcrowded and insanitary, there are also increasingly acute problems.
3. In several countries measures taken to combat the pandemic in places of deprivation of liberty have already led to disturbances both inside and outside of detention facilities, and to the loss of life. Against this background, it is essential that State authorities take full account of all the rights of person deprived of liberty and their families and detention and healthcare staff when taking measures to combat the pandemic.
4. Measures taken to help address the risk to detainees and to staff in places of detention should reflect the approaches set out in this Advice, and in particular the principles of 'do no harm' and 'equivalence of care'. It is also important that there is transparent communication to all persons deprived of liberty, their families and the media concerning the measures being taken and the reasons for them.
5. The prohibition of torture, cruel inhuman or degrading treatment or punishment cannot be derogated from, even during exceptional circumstances and emergencies which threaten the life of the nation.¹ The SPT has already issued guidance confirming that formal places of quarantine fall within the OPCAT mandate.² It inexorably follows that

¹ See UNCAT, Article 2(2) and ICCPR, Articles 4 and 7.

² Advice of the Subcommittee on Prevention of Torture to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for

all other places from which persons are prevented from leaving for similar purposes fall within the scope of the OPCAT mandate and thus within the sphere of oversight of both the SPT and of National Preventive Mechanisms (NPMs) established within the OPCAT framework.

6. Numerous NPMs have asked the SPT for further advice regarding their response to this situation. Naturally, as autonomous bodies, NPMs are free to determine how best to respond to the challenges posed by the pandemic within their respective jurisdictions. The SPT remains available to respond to any specific request for guidance that it may be asked to give. The SPT is aware that a number of valuable statements have already been issued by various global and regional and regional organisations which it commends to the consideration of States Parties and NPMs.^{3,4} The purpose of the present Advice is also to offer general guidance within the framework of the OPCAT for all those responsible for, and undertaking preventive visits to, places of deprivation of liberty.
7. The SPT would emphasise that whilst the manner in which preventive visiting is conducted will almost certainly be affected by necessary measures taken in the interests of public health, this does not mean that preventive visiting should cease. On the contrary, the potential exposure to the risk of ill-treatment faced by those in places of detention may be heightened as a consequence of such public health measures taken. The SPT considers that NPMs should continue to undertake visits of a preventive nature, respecting necessary limitations on the manner in which their visits are undertaken. It is particularly important at this time that NPMs ensure that effective measures are taken to reduce the possibility of detainees suffering forms of inhuman and degrading treatment as a result of the very real pressures which detention systems and those responsible for them now face.

II. Measures to be taken by authorities concerning all places of deprivation of liberty, including detention facilities, immigration detention, closed refugee camps, psychiatric hospitals and other medical settings

8. It is axiomatic that the State is responsible for the healthcare of those whom it holds in custody and that it has a duty of care to its detention and health-care staff. The Nelson Mandela Rules make it clear that ‘... *Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status*’.⁵

Coronavirus, adopted at its 40th session (10 to 14 February 2020), available at https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/2020.03.03-Advice_UK_NPM.pdf

³ See, for example, ‘Preparedness, prevention and control of COVID-19 in prisons and other places of detention - Interim guidance, 15 March 2020’ issued by the WHO and the ‘Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic issues by the European Committee for the Prevention of Torture’ on 20 March 2020 CPT/Inf (2020)13 (19th March 2020).

⁴ See CPT/Inf (2020)13 (19th March 2020) available at www.coe.int/en/web/cpt/-/covid-19-council-of-europe-anti-torture-committee-issues-statement-of-principles-relating-to-the-treatment-of-persons-deprived-of-their-liberty-

⁵ United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), UN Doc A/RES/70/175 (17 December 2015), Rule 24(1).

9. Given the heightened risk of contagion between those in custodial and other detention settings, the SPT urges all States to:
- 1) Conduct urgent risk assessments to identify those most at risk within the detained populations, and taking account of all particular vulnerable groups;
 - 2) Reduce prison populations and other detention populations wherever possible by implementing schemes of early, provisional or temporary release for those detainees for whom it is safe to do so, taking full account of non-custodial measures indicated as provided for in the Tokyo Rules;
 - 3) Place particular emphasis on places of detention where occupancy exceeds the official capacity, and where the official capacity is based on square metre-age per person which does not permit social distancing in accordance with the standard guidance given to the general population as a whole;
 - 4) Review all cases of pre-trial detention in order to determine whether it is strictly necessary in the light of the prevailing public health emergency and to extend the use of bail for all but the most serious of cases;
 - 5) Review the use of immigration detention and closed refugee camps with a view to reducing their populations to the lowest possible level;
 - 6) Release from detention should be subject to screening in order to ensure that appropriate measures are put in place for those who are either positive or are particularly vulnerable to infection;
 - 7) Ensure that any restrictions on existing regimes are minimised, proportionate to the nature of the health emergency, and in accordance with law;
 - 8) Ensure that the existing complaints mechanisms remain functioning and effective;
 - 9) Respect the minimum requirements for daily outdoor exercise, whilst also taking account of the measures necessary to tackle the current pandemic;
 - 10) Ensure that sufficient facilities and supplies are provided (free of charge) to all who remain in detention in order to allow detainees the same level of personal hygiene as is to be followed by the population as a whole;
 - 11) That where visiting regimes are restricted for health-related reasons, provide sufficient compensatory alternative methods for detainees to maintain contact with families and the outside world, for example, by telephone, internet/e mail, video communication and other appropriate electronic means. Such contacts should be both facilitated and encouraged, be frequent and free;
 - 12) Enable family members or relatives to continue to provide food and other supplies for the detainees, in accordance with local practices and with due respect for necessary protective measures;
 - 13) Accommodate those who are a greatest risk within the remaining detained populations in ways which reflect that enhanced risk, whilst fully respecting their rights within the detention setting;
 - 14) Prevent the use of medical isolation taking the form of disciplinary solitary confinement; medical isolation must be on the basis of an independent medical evaluation, proportionate, limited in time and subject to procedural safeguards;
 - 15) Provide medical care to detainees who are in need of it, outside of the detention facility, whenever possible;

- 16) Ensure that fundamental safeguards against ill-treatment (including the right of access to independent medical advice, to legal assistance and to ensure that third parties are notified of detention) remain available and operable, restrictions on access notwithstanding;
- 17) Ensure that all detainees and staff receive reliable, accurate and up to date information concerning all measures being taken, their duration, and the reasons for them;
- 18) Ensure that appropriate measures are taken to protect the health of detention and medical staff and that they are properly equipped and supported undertaking their duties;
- 19) Make available appropriate psychological support to all detainees and staff who are affected by these measures; and
- 20) Ensure that, if applicable, all the above considerations are taken into account as regards to patients who are involuntarily admitted to psychiatric hospitals.

III. Measures to be taken by authorities in respect of those in official places of quarantine

10. The SPT has already commented on the situation of those held in quarantine in its previous Advice⁶. To this, it would further add that:

- 1) Those who are being temporarily held in quarantine are to be treated at all times as free agents, except for the limitations necessarily placed upon them, in accordance with law and on the basis of scientific evidence, for quarantine purposes;
- 2) They are not to be viewed as, or treated as if they were, ‘detainees’;
- 3) Quarantine facilities should be of a sufficient size and have sufficient facilities to permit internal freedom of movement and a range of purposive activities;
- 4) Communication with families and friends through appropriate means should be encouraged and facilitated;
- 5) Since quarantine facilities are *de facto* a form of detention, all those so held should be able to benefit from the fundamental safeguards against ill-treatment, including information of the reasons for their being quarantined, the right of access to independent medical advice, to legal assistance and to ensure that third parties are notified of their being in quarantine, in a manner consonant with their status and situation;
- 6) That all appropriate measures are taken to avoid those who are in quarantine, or those who have been in quarantine, from suffering any form of marginalisation or discrimination, including once they have returned to the community; and
- 7) Appropriate psychological support should be available for those who need it, both during and after their period of separation.

⁶ See above, n 2.

IV. Measures to be taken by NPMs

11. NPMs should continue exercising their visiting mandate during the coronavirus pandemic, albeit the manner in which they do so may need to take account of legitimate restrictions currently imposed on social contact. NPMs cannot be completely denied access to official places of detention, including places of quarantine, even if temporary restrictions are permissible in accordance with OPCAT Article 14(2).
12. The objective of the OPCAT, as set out in Article 1, is to ‘establish system of regular visits’ and the purpose, as set out in the Preamble, is ‘the protection of persons deprived of their liberty against torture and other inhuman or degrading treatment or punishment’, this being a non-derogable obligation under international law. In the current context, this suggests that it is incumbent on NPMs to devise methods of fulfilling their preventive mandate in relation to places of detention which minimise the need for social contact but which nevertheless offer effective opportunities for preventive engagement.
13. Such measures might include:
 - 1) Discussing with relevant national authorities concerning the implementation and operation of mitigation measures, as outlined in chapters II and III above;
 - 2) Increase collection and scrutiny of data relating to places of detention, individually and collectively;
 - 3) Using electronic communication with those in places of detention;
 - 4) Establishing NPM ‘hotlines’ within places of detention and secure e mail and postal facilities;
 - 5) Tracking the setting up of new/temporary places of detention;
 - 6) Enhancing the distribution of information concerning the work of the NPM within places of detention and ensuring there are channels allowing prompt and confidential communication;
 - 7) Seeking to contact third parties (e.g. families and lawyers) who may be able to provide additional information concerning the situation within places of detention; and
 - 8) Enhancing co-operation with NGOs and relief organisations working with those deprived of their liberty.

V. Conclusion

14. It is not possible to predict accurately how long the current pandemic will last, or what its full effects will be. What is clear is that it is already having a profound effect on all members of society and will continue to do so for a considerable time to come. The SPT and NPMs must be conscious of the ‘do no harm’ principle as they undertake their work. This may mean that NPMs should adapt their working methods to meet the situation caused by the pandemic in order to safeguard the public, detention staff, detainees and themselves. The overriding criterion must be that of effectiveness in securing the prevention of ill-treatment of those subject to detaining measures. The parameters of prevention have been widened by the extra-ordinary measures which states have had to take. It is the responsibility of the SPT and of NPMs to respond in imaginative and creative ways to the novel challenges they face in the exercise of their OPCAT mandates.
